

REMARKS

This amendment is responsive to the Office Action of March 17, 2009. Reconsideration and allowance of claims 5, 8, and 12-20 are requested.

The Office Action

Claims 2-4, 6-10, and 13-19 stand rejected under 35 U.S.C. § 103 over Smith (US 2002/0130100) in view of Tingey (US 2002/0168530).

Claims 3, 4, and 10 stand rejected under 35 U.S.C. § 103 over Wesseler (US 5,534,228) in view of Tingey.

Claim 5 stands rejected under 35 U.S.C. § 103 over Smith in view of Tingey as further modified by Healy (US 5,425,435).

Claim 12 stands rejected under 35 U.S.C. § 103 over Smith in view of Tingey further modified by Cox (US 4,935,010).

Claim 20 stands rejected under 35 U.S.C. § 103 over Smith in view of Tingey as further modified by Shall (US 6,699,677).

The Present Amendment Should be Entered

The present amendment places the application in better condition for appeal without raising any issues that would require further search and consideration.

Claim 8 has been placed in independent form including the subject matter of its parent claim 10. Because claim 8 has not be substantively amended, it is submitted that this amendment to claim 8 raises no issues that would require further search or consideration.

The amendment also corrects the typographical errors in the manner suggested by the Examiner in the Claim Objections section of the Office Action. Because this is a correction of informalities and in a manner suggested by the Examiner, it is submitted that these amendments to claims 8, 13, 15, and 16 raise no issues that would require further search or consideration.

Claims 2-4, 6, 7, 9, and 10 have been cancelled, reducing the issues on appeal.

Accordingly, it is submitted that the present amendment should be entered.

**The Claims Distinguish Patentably
Over the References of Record**

Claim 8 calls for a collecting space for receiving fluid that can be introduced into the collecting space through the closure means. Figure 6B of Smith relied upon by the Examiner does not disclose or fairly teach such a collecting space. The space above septum insert 73A is not a collecting space for receiving fluid. The syringe needle 71 of Smith does not discharge fluid until after it has pierced the septum insert 73A. No fluid is received in the space above the septum insert.

Claim 8 further calls for a needle guide that encloses a portion of a needle tip receiving side of the closure structure. The Examiner refers the applicant to the part of 6B that touches the interior wall of the container 50. However, this portion does not enclose a portion of the needle tip receiving side of the septum insert 73A.

Claim 8 further calls for the needle guide to define a funnel shaped opening which directs a needle tip towards the closure structure. The Examiner suggests raising the septum insert 73A. First, there is no teaching in Smith or Tingey to raise the septum insert 73A. Second, raising the septum would remove or foreshorten the part of Figure 6B of Smith that touches the interior wall to such an extent that it would not function as a needle guide. Third, claim 8 calls for the collecting space to receive fluid introduced through the closure means and for the needle guide to direct a needle towards the closure means. Because the Examiner has already defined the part of Figure 6B of Smith that touches the interior wall of the container as the collecting space which receives fluid introduced through the closure means and is submitted that it is improper to also interpret the self same structure as a needle guide which directs the needle tip toward the closure structure. Fourth, it is submitted that the present application is the only source of motivation for reengineering the Smith structure in the manner suggested by the Examiner.

Accordingly, it is submitted that claim 8 and claims 5 and 12 dependent therefrom distinguish patentably and unobviously over the references of record.

Claim 13 calls for the closure device to have a structure which defines a collecting space and for a collecting structure which extends from the collecting space and configured to connect with the opening of the container. Figure 6B of Smith has no collecting space and no connecting structure extending from a collecting space to connect with the opening of the container. The part of Figure 6B of Smith

which contacts the inside wall of the container does not collect fluids. To the contrary, fluids are introduced on the other side of the septum insert 73A. Moreover, even if one were to define this region of Smith as the collecting space, there is no connecting structure extending from it.

If one were to raise the septum 73A of Smith, a portion of the part that touches the interior wall would still not be a collecting space because it does not collect fluids and there is no connecting structure extending from it.

Accordingly, it is submitted that claim 13 and claim 14 dependent therefrom distinguish patentably and unobviously over the references of record.

Claim 15 calls for a structure that defines a fluid collecting space and a connecting structure which extends from and defines an outlet to the fluid connecting space. When the Examiner defines the space above the septum insert 73A as a fluid collecting space, then there is no connecting structure. Moreover, the space above the septum insert 73A is not used for collecting fluid. Rather, the fluid is not discharged from the needle 71 until after it has pierced the septum insert.

Accordingly, it is submitted that claim 15 and claims 16-20 dependent therefrom distinguish patentably and unobviously over the references of record.

Claim 16 further calls for a needle guide disposed on a side of the closure structure opposite to the fluid collecting space. Because these two structures are claimed as being on opposite sides of the closure structure, it is submitted that the Examiner's interpretation of the same structure as meeting both of these limitations is improper. Moreover, raising the septum insert is not taught or fairly suggested by Smith or Tingey, and even if one were to raise the septum, the part of Smith which contacts the inside wall of the container below the septum would still not define a fluid collecting space or a connecting structure extending from it.

Claim 17 calls for the closure structure to have a cross section that is larger than a cross section of the connection structure. By contrast, in Figure 6B of Smith, the septum insert 73A is smaller in cross section than the part which engages the inside wall of the container which supports it.

Claim 19 calls for a container connected to the connecting structure such that fluid received in the fluid collecting space drains into the container. No fluid is received in and drains from the portion of Smith which the Examiner is trying to interpret as the fluid collecting space.

For the reasons set forth above, it is submitted that claims 16, 17, and 19 distinguish yet more forcefully over the references of record.

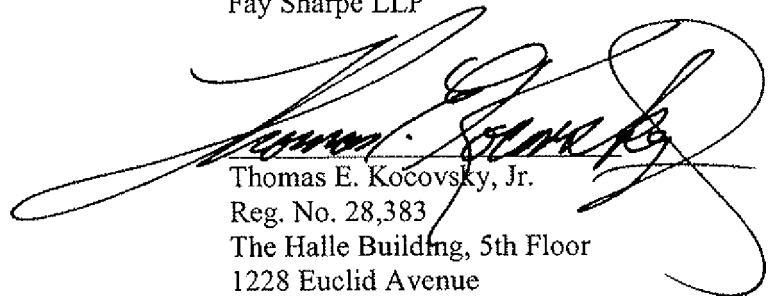
CONCLUSION

For the reasons set forth above, it is submitted that claims 5, 8, and 12-20 distinguish patentably and unobviously over the references of record. An early allowance of all claims is requested.

In the event the Examiner deems it advantageous to discuss any aspect of this amendment or the claims with the undersigned, she is invited to telephone the undersigned at 216.363.9122.

Respectfully submitted,

Fay Sharpe LLP

A large, stylized handwritten signature in black ink, likely belonging to Thomas E. Kocovsky, Jr., is written over the printed name and address.

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